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ORIGIN EB-11

INFO OCT-01 NEA-10 ISO-00 CIAE-00 COME-00 DODE-00 DOTE-00

FMC-04 INR-10 NSAE-00 RSC-01 CG-00 COA-02 DLOS-06

SWF-02 L-03 JUSE-00 SY-03 /053 R

DRAFTED BY EB/TT/MA:JPSTEINMETZ:EW

APPROVED BY EB/TT/MA:RKBANK

FMC:AREESE (SUBS.)

NEA/INS:DWBORN

----- 116941

R 272255Z MAR 74

FM SECSTATE WASHDC

TO AMCONSUL BOMBAY

INFO AMEMBASSY NEW DELHI

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E.O. 11652:N/A

TAGS:ETRN, IN, US

SUBJECT:FMC ASSERTS CLAIM AGAINST SCI

1. THE FEDERAL MARITIME COMMISSION (FMC) INFORMED THE DEPARTMENT IT HAS ASSERTED A PRELIMINARY PENALTY CLAIM IN THE AMOUNT OF 10,000 DOLLARS AGAINST THE SHIPPING CORPORATION OF INDIA, LTD. (SCI) UNDER NEW INFORMAL PROCEDURES ESTABLISHED BY PL 92-416 FOR 10 OR MORE ALLEGED VIOLATIONS OF SECTIONS 18(B)(1) AND 18(B)(3) OF THE SHIPPING ACT, 1916. THE FIRST SECTION READS: "...EVERY COMMON CARRIER BY WATER IN FOREIGN COMMERCE...SHALL FILE WITH THE COMMISSION....ALL RATES AND CHARGES OF SUCH CARRIER....FOR TRANSPORTATION TO AND FROM US PORTS AND FOREIGN PORTS BETWEEN ALL POINTS ON ITS OWN ROUTE AND ON ANY THROUGH ROUTE WHICH HAS BEEN ESTABLISHED...". THE LATTER SECTION READS: "NO COMMON CARRIER BY WATER IN FOREIGN COMMERCE.... SHALL CHARGE OR DEMAND OR COLLECT OR RECEIVE A GREATER OR LESS OR DIFFERENT COMPENSATION FOR THE TRANSPORTATION OF

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PROPERTY....THAN THE RATES AND CHARGES WHICH ARE SPECIFIED

IN ITS TARIFFS ON FILE WITH THE COMMISSION AND DULY PUBLISHED AND IN EFFECT AT THAT TIME;" FAILURE TO COMPLY WITH THESE PROVISIONS IS A VIOLATION OF US LAW AND ANY INFRACTOR IS SUBJECT TO LEGAL PROSECUTION. HOWEVER, PL 92-416 OF AUGUST 29, 1972 AMENDED US SHIPPING LEGISLATION BY CONVERTING CRIMINAL PENALTIES PROVIDED THEREIN TO

CIVIL PENALTIES IN CERTAIN INSTANCES AND GIVES THE FMC THE DISCRETION WHETHER TO ASSERT A CLAIM AND NEGOTIATE A SETTLEMENT, ITSELF, OR TO REFER THE VIOLATION TO THE DEPARTMENT OF JUSTICE FOR PROSECUTION. PREVIOUSLY, ALL SECTION 18 VIOLATIONS WERE HANDLED BY THE DOJ IN THE FIRST INSTANCE BECAUSE OF THEIR ANTI-TRUST OR CRIMINAL IMPLICATIONS.

2. THE ALLEGED VIOLATION OF SECTION 18(B)(1) OCCURRED O/A MAY 27, 1973 WHEN SCI CARRIED 2 SHIPMENTS FROM CALIFORNIA TO DIEGO GARCIA FOR WHICH IT HAD NO TARIFF IN EFFECT OR ON FILE WITH THE FMC APPLICABLE TO THIS TRADE. THE ALLEGED VIOLATION OF SECTION 18(B)(3) OCCURRED O/A DEC. 13, 1970 AND APRIL 2, 1972 WHEN THE SCI CARRIED 8 SHIPMENTS OF CARGO FOR BURN & CO., LTD. FROM CALCUTTA TO LOS ANGELES FOR WHICH IT COLLECTED OR RECEIVED A GREATER OR LESSER COMPENSATION THAN THE RATES SPECIFIED IN ITS TARIFF ON FILE WITH THE FMC APPLICABLE TO SUCH TRADE.

3. THE INITIAL PENALTY CLAIM IS BASED ON 10 BILLS OF LADING, 1,000 DOLLARS FOR EACH ONE. ADDITIONAL BILLS OF LADING MAY COME TO LIGHT AND COULD RESULT IN AMENDING THE AMOUNT CLAIMED. CONCEIVABLY, THE CLAIM COULD HAVE AMOUNTED TO A LARGER SUM HAD THE CALCULATIONS BEEN MADE AT THE MAXIMUM PENALTY RATE OF 1,000 DOLLARS DAILY ALLOWABLE UNDER SECTION 18 FOR EACH DAY A CARRIER IS FOUND TO BE IN VIOLATION OF THE SECTION.

4. ON MARCH 18, 1974 THE FMC SENT A LETTER ASSERTING THE CLAIM TO SCI'S AGENT, NORTON, LILLY & CO., INC., 90 WEST ST., NEW YORK CITY 10006. COPY OF THE LETTER WAS ALSO FORWARDED TO SCI LTD. IN BOMBAY.

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5. THE NEXT STEP IN THIS INFORMAL PROCEDURE WOULD BE FOR THE FMC AND REPRESENTATIVES OF SCI TO ENTER DISCUSSIONS TO RESOLVE THE MATTER. THE LINE IS UNDER NO LEGAL OBLIGATION TO MEET, NEGOTIATE, AND/OR SETTLE WITH THE FMC- FAILURE TO DO SO, HOWEVER, WOULD RESULT IN THE MATTER BEING REFERRED TO THE DOJ FOR PROSECUTION AND POSSIBLY A MUCH LARGER FINE UPON ADJUDICATION. THERE-

AFTER, REFUSAL TO PAY ANY FINE SET BY THE COURT WOULD
LEAVE THE DOJ NO ALTERNATIVE BUT TO OBTAIN A COURT ORDER
TO ATTACH PROPERTY OF THE LINE FOUND WITH US JURISDIC-
TION.

6. THIS MATTER IS BROUGHT TO THE CONGEN'S ATTENTION TO
ENABLE THE POST TO BE RESPONSIVE TO ANY INQUIRY THAT MIGHT
BE MADE BY THE LINE OR A GOI AGENCY. ANY DISCUSSION OF
THE CASE SHOULD EMPHASIZE THAT THE NEW PL 92-416 PROCED-
URES ARE MORE FLEXIBLE IN THAT THEY ALLOW THE FMC AND THE
INFRACTOR TO NEGOTIATE AN IMMEDIATE OUT-OF-COURT
SETTLEMENT, AND PRECLUDE THE NECESSITY OF LENGTHY AND
COSTLY LEGAL PROCEEDINGS.

7. WE HAVE INFORMALLY ADVISED INDIAN EMBASSY HERE OF
THIS CLAIM. RUSH

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LITIGATION, MARITIME LAW, STEAMSHIP LINES, FREIGHT RATES
Control Number: n/a
Copy: SINGLE
Draft Date: 27 MAR 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: MorefiRH
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE061628
Document Source: CORE
Document Unique ID: 00
Drafter: JPSTEINMETZ:EW
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740067-0268
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740310/aaaaajcp.tel
Line Count: 131
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: MorefiRH
Review Comment: n/a
Review Content Flags:
Review Date: 14 AUG 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <14-Aug-2002 by shawdg>; APPROVED <05-Sep-2002 by MorefiRH>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: MC ASSERTS CLAIM AGAINST SCI
TAGS: ETRN, IN, US, FMC, SHIPPING CORP OF INDIA LTD, SCI
To: BOMBAY
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005